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## ARTICLE VIII: GENEVA PROTOCOL OBLIGATIONS AND THE BTWC

by Nicholas A Sims, Graham S Pearson, Filippa Lentzos & Caitriona McLeish

### Consideration of Article VIII at the Seventh Review Conference

1. Article VIII of the Convention states that:

*Nothing in this Convention shall be interpreted as in any way limiting or detracting from the obligations assumed by any State under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on June 17, 1925.*

2. At the Seventh Review Conference of the BTWC held from 5 to 22 December 2011, the *Final Declaration*<sup>263</sup> in respect of Article VIII stated that:

*41. The Conference appeals to all States Parties to the 1925 Geneva Protocol to fulfil their obligations assumed under that Protocol and urges all states not yet party to the Protocol to ratify or accede to it without further delay.*

*42. The Conference acknowledges that the 1925 Geneva Protocol, which prohibits the use in war of asphyxiating, poisonous or other gases, and of bacteriological methods of warfare, and the Convention complement each other. The Conference reaffirms that nothing contained in the Convention shall be interpreted as in any way limiting or detracting from the obligations assumed by any state under the 1925 Geneva Protocol.*

*43. The Conference stresses the importance of the withdrawal of all reservations to the 1925 Geneva Protocol related to the Convention.*

*44. The Conference recalls the actions which States Parties have taken to withdraw their reservations to the 1925 Geneva Protocol related to the Convention, and calls upon those States Parties that continue to maintain pertinent reservations to the 1925 Geneva Protocol to withdraw those reservations, and to notify the Depositary of the 1925 Geneva Protocol accordingly, without delay.*

*45. The Conference notes that reservations concerning retaliation, through the use of any of the objects prohibited by the Convention, even conditional, are totally incompatible with the absolute and universal prohibition of the development, production, stockpiling, acquisition and retention of bacteriological (biological) and toxin weapons, with the aim to exclude completely and forever the possibility of their use.*

*46. The Conference notes that the Secretary-General's investigation mechanism, set out in A/44/561 and endorsed by the General Assembly in its resolution 45/57, represents an international institutional mechanism for investigating cases of alleged*

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<sup>263</sup> United Nations, The Seventh Review Conference of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, Geneva, 5 - 22 December 2011, *Final Document*, BWC/CONF.VI/7, 13 January 2012. Available at [http://www.unog.ch/80256EE600585943/\(httpPages\)/92CFF2CB73D4806DC12572BC00319612?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/92CFF2CB73D4806DC12572BC00319612?OpenDocument)

*use of biological or toxin weapons. The Conference notes national initiatives to provide relevant training to experts that could support the Secretary-General's investigative mechanism*

3. The Seventh Review Conference *Final Declaration* was developed from that adopted at the Sixth Review Conference of the BTWC held from 20 November to 8 December 2006, when the *Final Declaration*<sup>264</sup> in respect of Article VIII stated that:

*39. The Conference appeals to all States Parties to the 1925 Geneva Protocol to fulfill their obligations assumed under that Protocol and urges all states not yet party to the Protocol to ratify or accede to it without delay.*

*40. The Conference acknowledges that the 1925 Geneva Protocol, which prohibits the use in war of asphyxiating, poisonous or other gases, and of bacteriological methods of warfare, and the Convention complement each other. The Conference reaffirms that nothing contained in the Convention shall be interpreted as in any way limiting or detracting from the obligations assumed by any state under the 1925 Geneva Protocol.*

*41. The Conference stresses the importance of the withdrawal of all reservations to the 1925 Geneva Protocol related to the Convention.*

*42. The Conference welcomes the actions which States Parties have taken to withdraw their reservations to the 1925 Geneva Protocol related to the Convention, and calls upon those States Parties that continue to maintain pertinent reservations to the 1925 Geneva Protocol to withdraw those reservations, and to notify the Depositary of the 1925 Geneva Protocol of their withdrawals without delay.*

*43. The Conference notes that reservations concerning retaliation, through the use of any of the objects prohibited by the Convention, even conditional, are totally incompatible with the absolute and universal prohibition of the development, production, stockpiling, acquisition and retention of bacteriological (biological) and toxin weapons, with the aim to exclude completely and forever the possibility of their use.*

4. The six paragraphs agreed at the Seventh Review Conference was one more than the five paragraphs agreed at the Sixth Review Conference. In our analysis in Review Conference Paper No. 31 *The BTWC Seventh Review Conference: A Modest Outcome*<sup>265</sup> we made the following comments on the Article IV section of the *Final Declaration*:

**Commentary:** Paragraph 44 **recalls** the actions which States Parties have taken rather than **welcomes** the actions – the words used in the Final Declaration of the Sixth Review Conference. This is a retrograde step which hardly encourages States Parties to withdraw their reservations.

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<sup>264</sup> United Nations, The Sixth Review Conference of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, Geneva, 20 November - 8 December 2006, *Final Document*, BWC/CONF.VI/6, Geneva 2006. Available at <http://www.opbw.org>

<sup>265</sup> Graham S. Pearson and Nicholas A. Sims, *The BTWC Seventh Review Conference: A Modest Outcome*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 31, March 2012. Available at <http://www.brad.ac.uk/acad/sbtwc/briefing/RC Papers.htm>

The failure to do anything additional in regard to the Geneva Protocol is greatly regretted and is yet another missed opportunity. The strengthening of the language on Article VIII and indeed agreement on action should not have been difficult to agree – but much would have depended on whether France as Depositary urged such a step be taken. It is noted that the report of the Committee of the Whole (BWC/CONF.VII/5) shows that only Iran and Russia proposed language for Article VIII.

The transfer from Article VI to Article VIII of paragraph 46 regarding the UN Secretary-General's investigative mechanism is regrettable. Although in the Committee of the Whole debate, the Geneva Protocol was said to be the reason for moving this paragraph from Article VI to Article VIII, there is no mention of the Geneva Protocol in paragraph 46. Furthermore, because the scope of the UN Secretary-General's investigative mechanism is **not** limited to alleged breaches of the Geneva Protocol, Article VI was much the better place for it. Its positioning in Article VIII in the Seventh Review Conference Final Declaration looks all the more inexplicable.

Text for Article VIII in the Report of the COW (BWC/CONF.VII/5 dated 21 December 2011) was largely similar to that which appeared in the *Final Declaration*. However, the language for paragraph 43 in the Report of the COW was weaker than that of the Sixth Review Conference in that it said *calls for the withdrawal* instead of *stresses the importance of the withdrawal*. The stronger language was restored in the *Final Declaration* of the Seventh Review Conference. In contrast, the language for paragraph 44 in the Report of the COW had the stronger *welcomes* formulation.

## Developments since 1996

### Adherence to the Geneva Protocol

5. Universal adherence to the Geneva Protocol by all States, including all States Parties to the BTWC, has been an agreed politically binding commitment since 1980, reaffirmed by every subsequent Review Conference that has issued a *Final Declaration*. It should be noted that the original statement, in the *Final Declaration* which the First Review Conference agreed on 21 March 1980, called on all States not yet parties to the Geneva Protocol to ratify or accede to it at the earliest possible date; the Second Review Conference on 26 September 1986 urged them to adhere to it at the earliest possible date; the Third Review Conference on 27 September 1991 urged them to accede to it without delay, as did the Fourth Review Conference on 6 December 1996, the Sixth Review Conference on 8 December 2006 and the Seventh Review Conference on 22 December 2011.

6. However, both the proportion and the total number of BTWC States Parties which are **not** parties to the Geneva Protocol have increased since 1980, from 15 out of 87 (17%) to 42 out of 173 (24%) as of 3 April 2016. This makes it all the more necessary that the Eighth Review Conference should urge universal adherence to the Protocol and lay a special responsibility on BTWC States Parties, not yet parties to the Geneva Protocol, to take the necessary action without delay.

7. Since the Fourth Review Conference, eleven BTWC States Parties have taken steps to confirm their adherence to the Geneva Protocol:

Slovakia 1997 (confirmation on 1 July 1997 of its indication on 22 September 1993 that it considered itself bound by succession to the Czechoslovak ratification of 16 August 1938)

Saint Vincent and the Grenadines 1999 (succession)

Ukraine 2003 (succession)

Croatia 2006 (acceptance)

Serbia 2006 (succession)

El Salvador 2008 (ratification)

Slovenia 2008 (accession)

Costa Rica 2009 (accession)

Republic of Moldova 2010 (accession)

The former Yugoslav Republic of Macedonia 2015 (accession)

Colombia 2015 (accession)

8. Forty-two BTWC States Parties, as of 3 April 2016, have yet to complete formalities to accede or succeed to the Geneva Protocol:

Andorra

Armenia

Azerbaijan

Bahamas

Belarus

Belize

Bosnia-Herzegovina

Botswana

Brunei Darussalam

Burundi

Congo

Cook Islands

Democratic Republic of Congo

Dominica  
Gabon  
Georgia  
Guyana  
Honduras  
Kazakhstan  
Kyrgyzstan  
Mali  
Marshall Islands  
Mauritania  
Montenegro  
Mozambique  
Myanmar  
Nauru  
Oman  
Palau  
San Marino  
Sao Tome and Principe  
Seychelles  
Singapore  
Suriname  
Tajikistan  
Timor-Leste  
Turkmenistan  
United Arab Emirates  
Uzbekistan

Vanuatu

Zambia

Zimbabwe

9. These lists have been compiled with care but discrepancies are not unknown in Geneva Protocol listings<sup>266</sup>, and some aspects of state succession in particular give rise to uncertainties over treaty status in international law.

10. For example, it is possible that some states in this list of non-parties may have supposed themselves to have adhered by virtue of general declarations of succession to obligations, made at the time of gaining independence: general declarations which are, however, not recognised by the Depositary for the Geneva Protocol because they are insufficiently specific. Such states may be reluctant to deposit instruments of accession or succession because of the possible implication that they are doing so as non-parties from outside the Geneva Protocol. One solution in such cases might be a regularisation of notification. There is a precedent in the case of Paraguay, which transmitted its instrument of accession on 26 October 1933 but was not counted as a State Party by the Depositary until regularisation of the notification on 13 January 1969. Alternatively the route of confirmation of an earlier indication of succession to obligations might be followed, as by Slovakia on 1 July 1997.

11. All delegations to the Eighth Review Conference of BTWC States Parties which appear to be non-parties to the Geneva Protocol are recommended to check with the legal department of their Ministry of Foreign Affairs what action has been taken or might be taken in conjunction with France as the Depositary. It is possible in some cases that formal effect has not yet been given to political decisions: that the necessary international legal procedures, including formal communication to the Depositary and notification of the communication by the Depositary, have still to be completed. Delegations are recommended to clarify the position and if possible to announce, or to confirm, their government's adherence to the Geneva Protocol during the Eighth Review Conference.

### **Withdrawal of Geneva Protocol Reservations**

12. At the time the Fourth Review Conference adopted its uncompromising appeal to BTWC States Parties for the withdrawal of the remaining reservations to the Geneva Protocol, the most recent such withdrawals were those of

South Africa      12 July 1996

France              25 November 1996

They were joined in the next few years by four other BTWC States Parties, which withdrew their reservations to the Geneva Protocol on the following dates:

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<sup>266</sup> The French Government website on the Geneva Protocol is at <http://www.diplomatie.gouv.fr/traites/affiche traite.do?accord=TRA19250001>. Whilst this includes copies of many of the key documents, not all are available on the website. In addition, there is no indication of when this website page was last updated. The UNODA Disarmament Treaties Database has the 1925 Geneva Protocol at <http://disarmament.un.org/treaties/t/1925>. This includes “a note, statement, declaration, or reservation, is attached to the signature or depositary action” for some States. Again, there is no indication of when this website page was last updated.

Belgium	17 February 1997
Estonia	28 May 1999
Russian Federation	18 January 2001
Portugal	23 December 2002

13. In addition, two BTWC States Parties which had already, in 1991, modified their reservations so as to exclude bacteriological methods of warfare (Canada) or the use in war of the objects prohibited by Article I of the BTWC (United Kingdom) from the scope of their reservations, so as to render their Geneva Protocol and BTWC obligations fully consistent with one another, completed the withdrawal of the remaining parts of their reservations on the following dates:

Canada	28 October 1999
United Kingdom	20 December 2002

the latter giving legal effect to the withdrawal announced at the political level by Tony Lloyd MP, Minister of State at the UK Foreign and Commonwealth Office, at the opening Conference of the States Parties of the OPCW held 6 – 24 May 1997 at The Hague upon the entry into force of the Chemical Weapons Convention.

14. One BTWC State Party is understood to have modified its reservation so as to exclude the use of biological and toxin weapons in a letter to which the Depositary refers on its website, on the following date:

Republic of Korea	19 September 2002
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If this modification limited the scope of the South Korean reservation to retaliation with chemical methods of warfare only, it will have assimilated the Republic of Korea to the position occupied by the United States ever since it ratified the Protocol in 1975, and previously occupied by the Netherlands 1930-1995, Canada 1991-1999 and the United Kingdom 1991-2002 until they completed the withdrawal of the remaining parts of their reservations.

15. It is surprising, and indicative of a worrying lack of momentum, that there has been only one reservation withdrawal reported, and no reservation modified prior to withdrawal, since the end of 2002. Serbia announced in the BTWC Meeting of States Parties on 6 December 2010 that it had withdrawn its reservation on retaliation. This reservation had been understood to have been inherited from the original reservation *in regard to any enemy State whose armed forces or whose Allies fail to respect the prohibitions laid down in the Protocol* attached by the Kingdom of the Serbs, Croats and Slovenes – shortly thereafter officially renamed Yugoslavia – to its ratification of the Geneva Protocol on 12 April 1929. Serbia's withdrawal of its reservation has yet to be notified by the Depositary. When it takes full legal effect by such notification, this welcome action by Serbia will leave nineteen BTWC States Parties in the position of appearing to retain explicit reservations, attached upon ratification, accession or succession to the Geneva Protocol, which in the absence of any statement to the contrary purport to maintain a right of retaliation with bacteriological, as well as chemical, methods of warfare, twenty-five years since the Third Review Conference called for such



reservations to be withdrawn and twenty years since the Fourth Review Conference strengthened that call.

Algeria

Bahrain

Bangladesh

Cambodia<sup>267</sup>

China

Fiji

India

Iraq

Jordan

Korea, People's Democratic Republic of

Korea, Republic of<sup>268</sup>

Kuwait

Libya

Nigeria

Pakistan

Papua New Guinea

Solomon Islands

Vietnam

Yemen

Even though some of these States Parties may regard their BTWC obligations as having effectively superseded their Geneva Protocol reservations in so far as biological and toxin weapons are concerned, and may regard their reservations as obsolete, it is **strongly recommended** nevertheless that they act to put the matter beyond doubt by formally withdrawing those reservations. This action, when communicated to the French government

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<sup>267</sup> Cambodia's status with regard to the Geneva Protocol is unclear. The United Nations Office for Disarmament Affairs website lists a reservation entered by Cambodia reserving the right to retaliate in kind. The Depositary's website does not list this reservation.

<sup>268</sup> The status and nature of the Republic of Korea's reservation to the Geneva Protocol remains unclear, as discussed in paragraph 14 above.

as Depositary and notified by the latter to all States Parties, would render their treaty status under the Geneva Protocol fully consistent with their obligations under the BTWC and under customary international humanitarian law as elucidated by the International Committee of the Red Cross in Rules 72-76 of its 2005 study<sup>269</sup>. Rules 72 – 76 state:

*Poison*

**Rule 72.** *The use of poison or poisoned weapons is prohibited. [IAC/NIAC]*<sup>270</sup>

*Biological Weapons*

**Rule 73.** *The use of biological weapons is prohibited. [IAC/NIAC]*

*Chemical Weapons*

**Rule 74.** *The use of chemical weapons is prohibited. [IAC/NIAC]*

**Rule 75.** *The use of riot-control agents as a method of warfare is prohibited. [IAC/NIAC]*

**Rule 76.** *The use of herbicides as a method of warfare is prohibited if they:*

- (a) are of a nature to be prohibited chemical weapons;*
- (b) are of a nature to be prohibited biological weapons;*
- (c) are aimed at vegetation that is not a military objective;*
- (d) would cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which may be expected to be excessive in relation to the concrete and direct military advantage anticipated;*
- or*
- (e) would cause widespread, long-term and severe damage to the natural environment.*

*[IAC/NIAC]*

16. By withdrawing their explicit reservations, these States Parties would thereby be giving effect to the politically binding commitment agreed by the Third Review Conference and in more absolute terms by the Fourth, Sixth and Seventh Review Conferences. They would also be complying with the appeals for withdrawal of the remaining reservations which were issued jointly by France and Switzerland – respectively the Depositary Government and the Host Government for the Geneva Protocol – on the occasion of its eightieth anniversary, and subsequently by the Secretary-General of the United Nations in his message to the BTWC Meeting of States Parties when it opened on 5 December 2005.

### **Appeals for the Withdrawal of Reservations**

17. In the year following the Seventh Review Conference in 2011, the Secretary-General's report A/67/115<sup>271</sup> to the General Assembly on 26 June 2012 reported that *no withdrawals of reservations by States parties have been reported by the depositary of the 1925 Geneva Protocol* since the previous note by the Secretary-General on the subject, submitted to the

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<sup>269</sup> Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law. Volume I: Rules. International Committee of the Red Cross and Cambridge University Press, 2005, pp. 251-254, 256-267. Available at: <http://www.icrc.org/eng/resources/documents/misc/customary-law-rules-291008.htm>

<sup>270</sup> The abbreviation IAC refers to customary rules applicable in international armed conflicts and the abbreviation NIAC to customary rules applicable in non-international armed conflicts.

<sup>271</sup> United Nations General Assembly, *Measures to uphold the authority of the 1925 Geneva Protocol: Note by the Secretary-General*, A/67/115, 26 June 2012.

General Assembly at its sixty-fifth session (A/65/95) on 30 June 2010<sup>272</sup>. On 3 December 2012, the General Assembly adopted resolution A/RES/67/35<sup>273</sup> by 181 votes to none, with 4 abstentions (Israel, Marshall Islands, Palau, United States of America) which in its third paragraph

3. *Calls upon* those States that continue to maintain reservations to the 1925 Geneva Protocol to withdraw them;

18. Two years later, in 2014, one State party had withdrawn their reservation. The Secretary-General's report A/69/123<sup>274</sup> to the General Assembly on 14 July 2014 reported that *Since the adoption of resolution 67/35, a withdrawal by one State party has been reported by the depositary of the 1925 Geneva Protocol. By a communication dated 21 March 2014, Portugal withdrew the remaining reservation it had made at the time of its ratification of the Protocol.* On 2 December 2014, the General Assembly adopted resolution A/RES/69/53<sup>275</sup> by 181 votes to none, with 2 abstentions (Israel and United States of America) which in its third paragraph

3. *Calls upon* those States that continue to maintain reservations to the 1925 Geneva Protocol to withdraw them;

19. The 90th anniversary of the entry into force of the 1925 Geneva Protocol was marked on 17 June 2015 by the following statement posted on the French Ministry of Foreign Affairs and International Development website:

***Strategic affairs – 90th anniversary of the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (1925-2015)***

*Today we celebrate the 90th anniversary of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare. France is a depositary of this instrument, which is the primary text aimed at prohibiting the use of these weapons even in times of war.*

*The universalization of this protocol, which is supplemented by the Biological Weapons Convention, is one of our objectives. We call on the states that are not yet party to these agreements to adhere to them as soon as possible.*

20. A side event was organized during MSP/2015 by UNIDIR and France entitled *1925 – 2015 The Geneva Protocol at 90* with the following programme:

Welcoming remarks – Ambassador Mrs Alice Guitton of France and Jarmo Sareva, Director of UNIDIR

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<sup>272</sup> United Nations General Assembly, *Measures to uphold the authority of the 1925 Geneva Protocol: Note by the Secretary-General*, A/65/95, 30 June 2010.

<sup>273</sup> United Nations General Assembly, *Resolution adopted by the General Assembly 67/53 Measures to uphold the authority of the 1925 Geneva Protocol*, A/RES/67/53, 3 December 2012.

<sup>274</sup> United Nations General Assembly, *Measures to uphold the authority of the 1925 Geneva Protocol: Note by the Secretary-General*, A/69/123, 14 July 2014.

<sup>275</sup> United Nations General Assembly, *Resolution adopted by the General Assembly 69/53 Measures to uphold the authority of the 1925 Geneva Protocol*, A/RES/69/53, 11 December 2014.

The Geneva Protocol and the BWC – some notes from history – Dr Caitriona McLeish of the University of Sussex

The Geneva Protocol at 90: A biological cornerstone of the rules of war – Dr Filippa Lentzos of King's College, London.

During her opening remarks, Ambassador Alice Guitton of France said:

*France continues to call for the remaining states that have not yet acceded to the Protocol to do so. We would also like to encourage states parties to the Protocol to withdraw their reservations as many did including still recently.*<sup>276</sup>

21. France in a paper entitled *90th anniversary of the signature of the Protocol prohibiting the use in war of asphyxiating, poisonous or other gases and of bacteriological methods of warfare* submitted in April 2016 to the Preparatory Committee of the Eighth Review Conference said that France had “*launched in 2016 a series of demarches to States which are not yet party to the Protocol*” and that it called “*on those States which have made reservations upon accession to the Protocol to consider constructively the withdrawal of such reservations.*”<sup>277</sup>

22. The Eighth Review Conference is recommended to reaffirm the call for withdrawal of reservations in terms at least as strong and uncompromising as in 2011.

### **Proposals for the Eighth Review Conference**

23. The Eighth Review Conference has again the opportunity to call upon all States Parties not yet party to the Geneva Protocol to adhere to it without delay and to emphasise the absolute character and permanent status of the Convention by calling upon all States Parties to ensure that their treaty status under the Geneva Protocol is henceforth consistent with their obligations under the Convention, and to regularise that status, if there is any uncertainty remaining, by taking appropriate legal action in relation to the withdrawal of pertinent reservations.

24. The *Final Declaration* in 2016 will naturally draw upon language which proved its acceptability in 2011, and thereby confirm the cumulative development of the text through the recording of extended understandings of the implications of Articles of the Convention. In addition, it is recommended that the Conference authorise its continuing representative body – this would be the proposed Steering Committee consisting of the Chairmen and Vice-Chairmen of the Annual Meetings of States Parties to be held between the Eighth and Ninth Review Conferences together with the Chairmen of any Working Groups – in close cooperation with France as Depositary for the Geneva Protocol, to follow up the requests reaffirmed from paragraph 41 (of the Seventh Review Conference *Final Declaration*) that urges BTWC States Parties still outside the Geneva Protocol to accede or adhere to the Protocol and in paragraph 43 (of the Seventh Review Conference *Final Declaration*) calling upon States Parties which continue to maintain pertinent reservations to the Protocol to withdraw such reservations. This would be consistent with the authorisation of the same

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<sup>276</sup> Opening remarks by Ambassador Alice Guitton at *1925–2015: The Geneva Protocol at 90*, a side event co-hosted by France and UNIDIR, 15 December 2015, Geneva, Switzerland. Available at <http://conf.unog.ch/digitalrecordings/>

<sup>277</sup> France, *90 ans de la signature du Protocole concernant la prohibition de l'emploi a la guerre de gaz asphyxiants, toxiques ou similaires et de moyens bactériologiques*, BWC/CONF.VIII/PC/WP.11, 26 April 2016

Steering Committee to undertake demarches proposed<sup>278</sup> under the Article XIV section of the *Final Declaration*. There is, after all, a complementarity between actions to achieve universalisation of the Convention and actions to universalize acceptance (and acceptance without reservations) of the Geneva Protocol and both would benefit from universality.

25. As noted earlier in this chapter, although the lists have been compiled with care discrepancies are not unknown in Geneva Protocol listings, and some aspects of State succession in particular give rise to uncertainties over treaty status in international law. It is currently not easy to determine the status of an individual State in regard to the Geneva Protocol as there can be inconsistencies between information on the French Government website and that on the UNODA treaties database website. There would be benefits from the Implementation Support Unit being requested to support the Steering Committee in its actions to urge BTWC States Parties still outside the Geneva Protocol to accede or adhere to the Protocol and to call upon States Parties which continue to maintain pertinent reservations to the Protocol to withdraw such reservations. The Implementation Support Unit should, as part of this support, create and maintain in close cooperation with France as the Depositary, an up-to-date listing of the States Parties to the Geneva Protocol and the status and content of any remaining reservations.

### **Points for the *Final Document***

26. It is recommended that the Eighth Review Conference should agree language relating to Article VIII both in the Article by Article *Final Declaration* and also in the *Decisions and Recommendations* section of the *Final Document*. Points for both of these are set out here.

### **Article VIII in the Article by Article *Final Declaration***

27. The Conference is recommended to repeat the points made in the first five paragraphs of the Article VIII section in the 2011 *Final Declaration* with the addition of a further point to authorise its continuing representative body – this would be the proposed Steering Committee consisting of the Chairmen and Vice-Chairmen of the Annual Meetings of States Parties to be held between the Eighth and Ninth Review Conferences together with the Chairmen of any Working Groups – in close cooperation with France as Depositary for the Geneva Protocol, to follow up its request urging *all states not yet party to the Protocol to ratify or accede to it without delay* (reaffirming paragraph 41 of the 2011 *Final Declaration*) and its request calling upon States Parties which continue to maintain pertinent reservations to the Protocol to withdraw such reservations (reaffirming paragraph 43 of the 2011 *Final Declaration*). At the Eighth Review Conference, the *Final Declaration* should use the broader term “*adhere to*” – as it was in the *Final Declaration*<sup>279</sup> of the Second Review Conference in 1986 – rather than “*accede to*” as “*adhere to*” encompasses not only accession by non-signatories but the possibility of a state adhering to the Geneva Protocol by regularisation of a prior notification or by a specific declaration of succession to obligations.

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<sup>278</sup>See Graham S. Pearson & Nicholas A. Sims, *Article XIV: Universal Adherence to the Convention*, in Graham S. Pearson, Nicholas A. Sims & Malcolm R. Dando (eds), *Strengthening the Biological Weapons Convention: Key Points for the Eighth Review Conference*, University of Bradford, Division of Peace Studies, July 2016. Available at <http://www.brad.ac.uk/acad/sbtwc>

<sup>279</sup>United Nations, The Second Review Conference of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, Geneva, 8–26 September 1986, *Final Document*, BWC/CONF.II/13, Geneva 1986. Available at <http://www.opbw.org>

28. The points to be made by the Eighth Review Conference in its *Final Declaration* on Article VIII are thus:

- a. To appeal to all States Parties to the 1925 Geneva Protocol to fulfill their obligations assumed under that Protocol and to urge all states not yet party to the Protocol to adhere to it without delay.
- b. To acknowledge that the 1925 Geneva Protocol, which prohibits the use in war of asphyxiating, poisonous or other gases, and of bacteriological methods of warfare, and the Convention complement each other.
- c. To reaffirm that nothing contained in the Convention shall be interpreted as in any way limiting or detracting from the obligations assumed by any state under the 1925 Geneva Protocol.
- d. To stress the importance of the withdrawal of all reservations to the 1925 Geneva Protocol related to the Convention.
- e. To welcome the actions which States Parties have taken to withdraw their reservations to the 1925 Geneva Protocol related to the Convention, and to call upon those States Parties that continue to maintain pertinent reservations to the 1925 Geneva Protocol to withdraw those reservations, and to notify the Depositary of the 1925 Geneva Protocol of their withdrawals without delay and inform the next Annual Meeting of the BTWC States Parties.
- f. To note that reservations concerning retaliation, through the use of any of the objects prohibited by the Convention, even conditional, are totally incompatible with the absolute and universal prohibition of the development, production, stockpiling, acquisition and retention of bacteriological (biological) and toxin weapons, with the aim to exclude completely and forever the possibility of their use.
- g. To call upon its continuing representative body – this would be the proposed Steering Committee consisting of the Chairmen and Vice-Chairmen of the Annual Meetings of States Parties to be held between the Eighth and Ninth Review Conferences together with the Chairmen of any Working Groups – in close cooperation with France as Depositary for the Geneva Protocol, to follow up its requests calling on all States Parties not yet party to the Protocol to adhere to it without delay and calling upon States Parties which continue to maintain pertinent reservations to the Protocol to withdraw such reservations and to provide an annual report on their follow up of these requests to the Annual Meeting of States Parties and to the Ninth Review Conference.

### ***Decisions and Recommendations Section of the Final Document***

29. The point about the continuing representative body following up on requests also needs to be included in the *Decisions and Recommendations* section of the *Final Document*. As it is proposed that the same continuing representative body –the proposed Steering Committee consisting of the Chairmen and Vice-Chairmen of the Annual Meetings of States Parties to be held between the Eighth and Ninth Review Conferences together with the Chairmen of any

Working Groups – as that recommended to oversee *Promotion of Universalization*<sup>280</sup> should also follow up requests calling on all States Parties not yet party to the Protocol to adhere to it without delay and calling upon States Parties which continue to maintain pertinent reservations to the Protocol to withdraw such reservations, it would be logical to include additional points within the *Steering Committee to Promote the Constructive Strengthening of the Convention* section of *Part III: Decisions and Recommendations* as follows:

- a. To request the Steering Committee, in close cooperation with France as Depositary for the Geneva Protocol, to follow up requests calling on all States Parties not yet party to the Protocol to adhere to it without delay and calling upon States Parties which continue to maintain pertinent reservations to the Protocol to withdraw such reservations.
- b. To agree that the Steering Committee shall provide an annual report on their follow up of these requests to the Annual Meeting of States Parties and to the Ninth Review Conference.
- c. To request the Implementation Support Unit, in close cooperation with France as Depositary for the Geneva Protocol, as part of its support to the Steering Committee to create and maintain an up-to-date listing of the States Parties to the Geneva Protocol and the status and content of any remaining reservations.

30. These additional tasks for the Implementation Support Unit should also be included in the *Implementation Support Unit* section of *Part III: Decisions and Recommendations* as follows:

- a. To request the Implementation Support Unit, in close cooperation with France as Depositary for the Geneva Protocol, as part of its support to the Steering Committee to create and maintain an up-to-date listing of the States Parties to the Geneva Protocol and the status and content of any remaining reservations.

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<sup>280</sup> See Graham S. Pearson & Nicholas A. Sims, *Article XIV: Universal Adherence to the Convention*, in Graham S. Pearson, Nicholas A. Sims & Malcolm R. Dando (eds), *Strengthening the Biological Weapons Convention: Key Points for the Eighth Review Conference*, University of Bradford, Division of Peace Studies, July 2016. Available at <http://www.brad.ac.uk/acad/sbtwc>